

1 The Honorable John C. Coughenour
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10 UNITED STATES DISTRICT COURT
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12 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

13 MATTHEW BUHL, KERIC MCKENNA,
14 JUSTIN COWGILL, JANE DOE, and
15 JOHN DOE,

16 Plaintiffs,
17 v.

18 SEATTLE POLICE OFFICERS JOHN
19 DOES #1 THROUGH 4, and
20 THE CITY OF SEATTLE,

21 Defendants.

22 NO. C09-0598-JCC

23 ANSWER TO PLAINTIFF'S CIVIL
RIGHTS COMPLAINT UNDER
42 U.S.C. § 1983, AFFIRMATIVE
DEFENSES, AND JURY DEMAND

24
25 COMES NOW The City of Seattle, and for answer to the plaintiffs' civil rights
26 complaint under 42 U.S.C. § 1983, does hereby admit, deny, and allege as follows:

27 1. Only plaintiff Matthew Buhl has signed the *pro se* civil rights complaint
28 under 42 U.S.C. § 1983, and neither Keric McKenna nor Justin Cowgill have properly
29 moved to join, therefore defendant The City of Seattle denies the allegations concerning
30 "parties to this complaint." Likewise, The City of Seattle denies that John Does are
31 proper party defendants, or that any individuals have been named, properly joined or
32 properly served.

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34 ANSWER TO PLAINTIFF'S CIVIL RIGHTS COMPLAINT
35 UNDER 42 U.S.C. § 1983 - 1

36 C09-0598-JCC
37 3019-030834 500422

38 STAFFORD FREY COOPER

39 PROFESSIONAL CORPORATION

40 601 Union Street, Suite 3100

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1 2. For answer to the "Statement of Claim," defendant The City of Seattle
2 admits that on May 1, 2006, a large demonstration/parade occurred in the downtown
3 area of The City of Seattle, and that police officers of the City of Seattle Police
4 Department, including officers of the Seattle Police Department bicycle patrol, were
5 assigned to conduct crowd control in an attempt to maintain peace along a planned
6 immigration protest march and parade route, which consisted of tens of thousands of
7 marchers. Defendant The City of Seattle further admits that, at approximately 1718
8 hours, Seattle Police Department Dispatch broadcast a 9-1-1 call concerning a group of
9 people near or in front of the office building at 1001 Fourth Avenue who appeared to be
10 armed, and who were not part of the march/protest. Defendant The City of Seattle
11 further admits that members of the Seattle Police Department bicycle unit made contact
12 with a group of four white males and one white female who met the description of the
13 9-1-1 call, and were subsequently identified by the 9-1-1 caller. It was determined that
14 one member of the group was wearing a bulletproof vest, and that three members of the
15 group were armed with handguns. Defendant The City of Seattle further admits that at
16 the time contact was made, tens of thousands of marchers were passing by, the
17 situation was loud, raucous, busy and confusing; and that for the safety of all
18 concerned, the five members of the detained group were removed from the area to a
19 safe area away from the protest march, for their own safety as well as the safety of the
20 officers. Subsequently, a can of mace and a switchblade knife were recovered.

21 Because of the need to investigate the five concerning the weapons and firearms
22 recovered, the group was detained and removed to the West Precinct of the Seattle
23 Police Department for purposes of conducting and furthering an investigation, including

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UNDER 42 U.S.C. § 1983 - 2

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1 the legality of the concealed weapons. After an investigation was completed, all
2 members of the group were released without charges being filed.

3 Except as admitted above, any and all other allegations contained in the
4 "Statement of Claim" are hereby denied.

5 FOR FURTHER ANSWER AND BY WAY OF AFFIRMATIVE DEFENSES,
6 defendant The City of Seattle alleges as follows:

7 1. John Doe defendants are not recognized, and therefore this Court has no
8 jurisdiction over any John Doe defendants.

9 2. The Court lacks subject matter jurisdiction over any individually-identified
10 and/or named defendants.

11 3. There has been a lack of service and insufficiency of service, and
12 therefore the Court lacks jurisdiction.

13 4. Plaintiffs' complaint fails to state a cause of action, in whole or in part,
14 upon which relief can be granted.

15 5. Plaintiffs' complaint fails to state a cause of action under 42 U.S.C. § 1983
16 against The City of Seattle, and therefore the complaint must be dismissed.

17 6. Plaintiffs have failed to effectuate proper service consistent with Rule 4(m)
18 of the Federal Rules of Civil Procedure, and have likewise failed to comply with this
19 Court's Order of December 15, 2009 (Dkt. #17).

20 7. Officers of the Seattle Police Department, including those whom plaintiffs
21 seem to be trying to improperly join in this action, were at all times acting within the
22 course and scope of their employment, in good faith, in accordance with the law,
23 reasonably, and are entitled to qualified immunity.

ANSWER TO PLAINTIFF'S CIVIL RIGHTS COMPLAINT
UNDER 42 U.S.C. § 1983 - 3

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8. Only one plaintiff has signed the complaint, and that plaintiff may not represent any other plaintiffs *pro se*. The other potentially-named plaintiffs have not signed the complaint, are not proper parties, and have not filed motions to join or entered formal notices of appearance representing themselves.

9. If the plaintiffs sustained any damages, which is denied, the same were caused by their own contributory fault, misconduct, or other inappropriate conduct which caused, or contributed to cause, contact with the Seattle Police Officers and their temporary detention.

10. Defendant The City of Seattle reserves the right to amend, supplement or revise these affirmative defenses as further proceedings in this matter reveal to be appropriate.

JURY DEMAND

Defendant The City of Seattle requests a trial by jury.

HAVING FULLY ANSWERED PLAINTIFFS' COMPLAINT, defendant The City of Seattle denies paragraphs A through E of plaintiffs' *pro se* complaint entitled "Relief," and does hereby pray

1. that this Court dismiss plaintiffs' complaint with prejudice,

2. that plaintiff and/or plaintiffs take nothing thereby,

3. that defendant/defendants be awarded their costs and disbursements
ed herein, including reasonable attorneys' fees for having to defend the plaintiffs'
aint, and

4. for such other and further relief as the Court deems just, proper and equitable.

ANSWER TO PLAINTIFF'S CIVIL RIGHTS COMPLAINT
UNDER 42 U.S.C. § 1983 - 4

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1 DATED this 24th day of February 2010.

2 STAFFORD FREY COOPER

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4 By: /s/ Stephen P. Larson via ECF
Stephen P. Larson, WSBA #4959
5 Attorneys for Defendant The City of Seattle

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ANSWER TO PLAINTIFF'S CIVIL RIGHTS COMPLAINT
UNDER 42 U.S.C. § 1983 - 5

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Certificate of Service

I certify that on the date noted below I electronically filed this document entitled ANSWER TO PLAINTIFF'S CIVIL RIGHTS COMPLAINT UNDER 42 U.S.C. § 1983, AFFIRMATIVE DEFENSES, AND JURY DEMAND with the Clerk of the Court and I certify that I have caused to be served in the manner noted below a copy of the above-listed document to the following non CM/ECF participants:

Matthew Buhl
5307 Fourth Avenue South, Unit 223
Seattle, WA 98104

Keric S. McKenna
3516 NE 75th Street, Unit 2
Seattle, WA 98115

Justin Cowgill
4459 Brygger Drive West
Seattle, WA 98199

Via First Class Mail

DATED this 24th day of February, 2010, at Seattle, Washington.

/s/ Stephen P. Larson via ECF

**ANSWER TO PLAINTIFF'S CIVIL RIGHTS COMPLAINT
UNDER 42 U.S.C. § 1983 - 6**

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